

(Ole/m)

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-FRANCOIS GROLLIER
and ISABELLE HANSENNE-RICHOUX

Appeal No. 95-4906
Application 07/708,379¹

HEARD: July 10, 1996

MAILED

JUL 24 1996

**PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before JOHN D. SMITH, WEIFFENBACH, and WARREN, *Administrative Patent Judges.*

WARREN, *Administrative Patent Judge.*

DECISION ON APPEAL

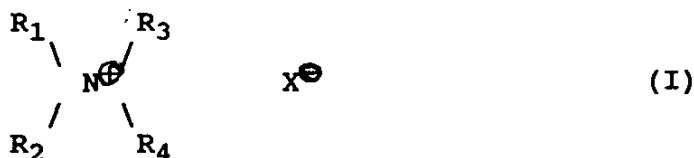
This is an appeal from the decision of the examiner finally rejecting claims 22 through 45, 47 and 48. Claim 22 is

¹ Application for patent filed May 31, 1991.

illustrative of the invention encompassed by the claims on appeal:

22. A cosmetic or pharmaceutical composition for the treatment of the hair and scalp comprising an ionic amphiphilic lipid capable of forming a water-insoluble hydrated lipidic lamellar phase, optionally in combination with a stabilizer, said lipid being in a dispersed form in a continuous aqueous phase containing:

(1) at least one cationic surface active agent having the formula



wherein

X is chlorine or CH_3SO_4^- and R_1 is a $\text{C}_1\text{-C}_4$ alkyl radical and wherein

(a) when X is chlorine,

(i) either R_2 and R_3 are $\text{C}_1\text{-C}_4$ alkyl radicals identical with or different from R_1 and from each other and R_4 is a $\text{C}_{16}\text{-C}_{22}$ alkyl radical;

or (ii) $R_2=R_1$ and

(i') either $R_3=R_4=C_{18}$ alkyl radical, or

(ii') $R_3=(C_{17}$ alkyl) amidopropyl radical and $R_4= (C_{14}$ alkyl) acetate radical and

(b) when X is $CH_3SO_4^-$

R_2 represent an (alkyl) amidoethyl radical, an (alkenyl) amidoethyl radical or an (alkylalkenyl) amidoethyl radical wherein each of the alkyl and alkenyl moieties is a $C_{13}-C_{21}$ radical and is derived from tallow fatty acids, and

R_3 and R_4 together with the nitrogen atom to which they are attached form a 4,5-dihydroimidazole ring substituted in position 2;

or (2) at least one quaternized protein consisting of a chemically modified polypeptide carrying at the end of a chain or grafted onto the latter at least one quaternary ammonium group containing at least one C_1-C_{18} alkyl chain, said polypeptide being an animal protein hydrolyzate,

or both (1) and (2) defined above,

with the proviso that when said composition contains distearyldimethylammonium chloride as a cationic surface active agent, said composition necessarily contains at least one quaternized protein defined in (2) above.

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The appealed claims as represented by claim 22² are drawn to a cosmetic or pharmaceutical composition for the treatment of the hair and scalp comprising an ionic amphiphilic lipid capable of forming a water-insoluble hydrated lipidic lamellar phase which is dispersed in a continuous aqueous phase containing at least one cationic surface active agent having the formula shown in the claim and/or at least one quaternized animal protein hydrolyzate as defined in the claim.

The examiner has relied on the following references:

Vanlerberghe et al. (Vanlerberghe)	4,772,471	Sep. 20, 1988
Handjani et al. (Handjani) (France)	2,597,367	Oct. 23, 1987
Grollier et al. (Grollier) (Great Britain)	2,157,168A	Oct. 23, 1985

² Appellants in the brief specified that the appealed claims stand or fall together. 37 CFR § 1.192(c) (5) (1993).

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The examiner has rejected claims 22 through 45, 47 and 48 on appeal under 35 U.S.C. § 103 as being unpatentable over Grollier in view of Vanlerberghe and Handjani. We reverse.

Rather than reiterate the respective positions advanced by the examiner and appellants we refer to the examiner's answer and to appellants' brief for a complete exposition thereof.

Opinion

We find ourselves in agreement with appellants that the examiner has failed to carry her burden of establishing a *prima facie* case of obviousness over the applied references. It is well settled that the examiner may satisfy this burden by showing some objective teachings or suggestions in the prior art taken as a whole or that knowledge generally available to one of ordinary skill in the art would have led that person to combine the relevant teachings of the references in the proposed manner to arrive at the claimed invention without recourse to the teachings

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in appellants' disclosure. See generally *In re Oetiker*,
977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992);
In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88
(Fed. Cir. 1984); *In re Fine*, 837 F.2d 1071, 1074-1076,
5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988) and cases cited there-
in; *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177
(CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

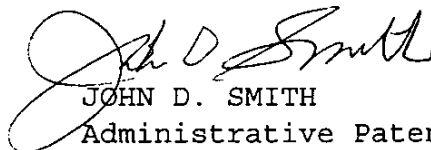
On the record before us, we find no direction to disperse an
ionic amphiphilic lipid capable of forming a water-insoluble
hydrated lipidic lamellar phase along with at least one cationic
surface active agent having the formula shown in the claim and/or
at least one quaternized animal protein hydrolyzate as defined in

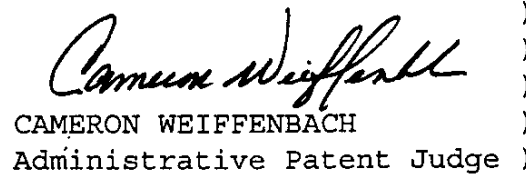
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the claim in a continuous aqueous phase except appellants'
specification.

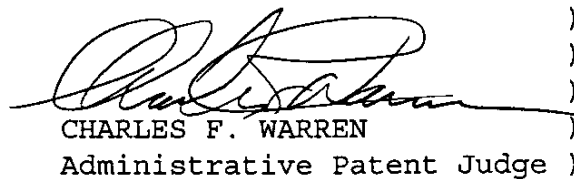
The examiner's decision is reversed.

Reversed


JOHN D. SMITH
Administrative Patent Judge)


CAMERON WEIFFENBACH
Administrative Patent Judge)

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CHARLES F. WARREN
Administrative Patent Judge)

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